CITIZEN ADVISORY COMMITTEE RETREAT
ISSUE D - AFFECT ON ELECTRIC RELIABILITY

Are the variance procedures adequate to safeguard electric reliability?

ALTERNATIVES:

1. Provide variance opportunity for non-major utility sources affected by the mercury rules.
2. Maintain existing rules and variance language.
3. Modify rules so they are "cost-effective, reasonable, and do not interfere with the ability of electric utilities to supply the state's energy needs", and fine-tune existing variance language.
4. Maintain existing rules and expand variance language beyond focus on short-term, one-time occurrences of electric supply emergencies or fuel supply disruptions to include situations where the compliance standards are not feasible or lead to fuel-switching.

COMMITTEE DISCUSSION:

Committee members felt that the existing variance language in the proposed rules are confusing and needs clarification. Committee members agreed that it would be appropriate to consider adding provisions in the rules to address short-term compliance issues (e.g. maintenance or compliance margins for new technology) in addition to the current variance provisions. The committee members recognized the work of the Technical Advisory Group on this issue and deferred to their efforts to provide recommendations on short-term compliance issues and as well as adjustments to the existing variance language. Committee members also expressed no objection to the addition of variance provisions for sources other than major utilities (Alternative 1.).

PROVISIONS IN THE PROPOSED RULES:

NR 446.12 Variance for major utilities. This section outlines the process for a major utility to obtain a variance from the baseline mercury emissions and emissions reduction requirements in the proposed rules. An alternative compliance schedule or alternative reduction requirement may be requested. The Department will consider granting a variance based on a demonstration of economic or technological infeasibility. In addition, there is provision that would allow a variance to be granted if electric reliability is threatened. The Department would consult with the Public Service Commission on any variance request that involves issues of electric reliability. Opportunity for public comments and a public hearing, if requested, are also included.

ADDITIONAL BACKGROUND:

The Natural Resources Board in their resolution authorizing development of administrative rules directed the Department to "develop proposed rules that are cost-effective, reasonable, and do not interfere with the ability of electric utilities to supply the state's energy needs."

The Board also directed that the following be incorporated:

> A provision that would allow the Department to grant variances, such as deadline extensions and alternative emission limits, if it determines that compliance with the reduction requirements is not technologically feasible, would jeopardize electric

reliability or would cause unreasonable hardship as long as the variance would not result in undue harm to human health or the environment.

The proposed rules include provisions that are similar to the electric reliability variance language in the state acid rain law – Section 285.41, Wis. Stats.

The Technical Advisory Group is developing a brief that addresses this issue.

SUMMARY OF PUBLIC COMMENT:

Wisconsin Public Service Corporation – Although the variance provision in the proposed rules provides some relief for extraordinary circumstances, the provisions in the section gives little comfort to a source in the event that the equipment fails to perform as DNR has projected.

Sierra Club – The rule currently allows for review and reassessment of the goals by the DNR to increase or decrease the timeline and reductions. If the PSC, at the urging of utilities, decides that meeting the rule requirements is technologically or economically unachievable or will harm electric reliability, they can grant a variance to the company. Review of either of these determinations must have adequate public review and input. PSC requests for input on this rule allowed neither adequate time nor opportunity. We recommend that the DNR, not the PSC, have ultimate control over granting any variance.

Wisconsin Paper Council – The rule provides a variance from the reduction requirements for utilities, but it does not include a variance provision for sources subject to the mass cap requirement. A variance should be allowed for mass cap facilities.

Wisconsin Electric - The proposed rules allow the Department, in consultation with the PSC, to grant variances to electric utilities under certain electric reliability conditions, fuel supply shortages or other events. While we support the inclusion of selected variance provisions in any rule that will have a major impact on a energy supply, we emphasize that the rules should be drafted and enacted primarily based on what *can* be accomplished rather than preparing for instances in which the rules cannot be met. The Department has suggested that the variance provisions provide an assurance that the rule conditions could be modified if the rules result in unacceptable impacts to energy supply. But this kind of contingency-based rule-making actually creates more uncertainty, and is potentially more expensive to comply with than a rule-making that instead focuses on identifying clearly attainable reductions according to a reasonable implementation schedule. We continue to advocate for a reasonable set of rules, and once these have been identified, request that appropriate variance provisions be included.

Alliant Energy –Under NR446.12, the variance language in the proposed rule is impractical, weak and not flexible enough to accommodate potential reliability, technology, or cost issues. The rule's provisions for a variance from reduction requirements are clearly written for short term, one-time occurrences of electric supply emergencies or fuel supply disruptions. It will not be adequate for the more difficult situation where the compliance standards are not feasible or are so expensive that other fuel sources must be used. The only proposed opportunity to modify the requirements due to technology infeasibility or costs offers no direction as to what proof DNR will accept related to technological or cost feasibility issues.

Another concern involves situations where the achieved emissions reductions cannot be maintained due to system failures. For example, if a large natural gas-fired unit or a coal fired unit with mercury controls fails, the system-wide mercury emissions may exceed an emission

limit, and a resulting unit shutdown could jeopardize meeting electric demand. The proposed rule contains language that allows the DNR to waive the standards upon a specific showing by a plant operator. However, this language does not provide adequate assurance of protection from an unanticipated or an after-the-fact determination of an exceedance of mercury emissions standards due to equipment failure. If adequate assurances of immunity from prosecution are not available, then it is possible that operators would shut down facilities immediately rather than risk penalties.

Wisconsin's Environmental Decade – The rule contains a variance provision that states that the DNR in consultation with the Public Service Commission, may grant a variance to a utility based on a few reasons, one being potential to harm electric reliability.
Stora Enso – The proposed rule contains a variance from reduction requirements for utilities but does not contain a similar provision for sources subject to the mass cap requirement.

Wisconsin Manufacturers and Commerce – The reliance on a variance provision to remedy the technical and energy policy deficiencies of the rule is questionable. While variance provisions are needed, their ability to address the defects with this proposal is grossly overstated.

COMMITTEE MEMBER INTERESTS:

Joe Shefchek – Alliant Energy
Define rule language more clearly, specifying the criteria necessary to meet eligibility for variance - this includes defining key considerations to determine the maximum degree of emission control that is achievable when considering technical feasibility, energy impacts, net multi-media environmental benefits, economic impacts (capital and operational expense) and other potential costs (i.e., monitoring, maintenance).
Define rule language more clearly, regarding the procedures for variance approvals and required qualifications of person(s) responsible for evaluation/approval of variance requests.
Add rule provisions to address short-term system failures that allow for "on the spot" determinations in the event of eminent and immediate issues jeopardizing system reliability - i.e., such as unexpected unit shutdowns, control equipment malfunctions, monitoring equipment problems, etc.

Annabeth Reitter – Stora Enso
Important issue to consider in developing the reduction levels and cannot just be limited to the variance issue. Involve PSC in an analysis on the impact of electric reliability, fuel mix and energy cost.

Mark Yeager - ECCOLA
Studies show willingness to pay between $ 120 and $ 200 per year per household for as little as 12% Hg deposition reduction. These dollars go directly to the utilities for new clean-up technology and service reliability…. it does not cost utilities anything in profits therefore should not be a reliability threat. Conservation and efficiency programs have yet to be considered, yet the talk has been of "meeting demand." Let's reduce demand before meeting it.

Marc Looze - WED
-The claim that this rule will require every coal plant to be shut down and be replaced by a natural gas plant is invalid. Although we support retiring old, inefficient and dirty coal plants (e.g. WEPCO's proposed Pt. Washington conversion) the rule is based on retrofitting existing plants.
-Thanks in part to the phasing of the rule, utilities will have time to familiarize themselves with mercury controls, which should help to address reliability concerns.
-A good historical analogy exists to provide clarification of why WI's Hg rule will not impact reliability. The PSC recently authorized utility plans to retrofit nearly every coal plant in the state

with nitrogen oxide control equipment within a four-year period (before the Supreme Court ruled that Wisconsin did not have to make these pollution control investments) and expressed no concerns about reliability. The risk to electric reliability would have been far greater with NOx retrofits in four years as opposed to mercury retrofits in fifteen years.

Wayne Stroessner – Random Lake
Certainly utilities should be encouraging conservation of electrical use and efficiency of appliances and energy use.

Our legislature should set up:

1. Production tax credits (PTC) for wind, solar, geothermal, wave, tides, hydro, and any other type of renewable energy source;
2. Net metering for all renewable energy sources.
3. Tax incentives for designing of daylight in buildings.
4. Continue the "non taxable fixed charge" monthly charge found on our utility bills to provide funds for conservation purposes. This is part of a $52,000,000.00 annual program called "Wisconsin's Focus on Energy" run by the DOA and is designed for low income families to conserve energy;
5. Special tax incentives for fuel cells using hydrogen in which there is no pollution...only electricity, heat and pure water (see ALTERNATIVES).

Utilities should encourage development of the hydrogen economy in which energy can be produced at home, businesses, commercial and industrial locations as well as hospitals, schools and other public buildings.

Utilities could continue being energy producers by producing pure hydrogen via electrolysers during their "off-peak" hours (this is most effective for nuclear plants, which can run more efficiently 24 hours per day.)

Mark Yeager - ECCOLA
Studies show willingness to pay between $120 and $200 per year per household for as little as 12% Hg deposition reduction. These dollars go directly to the utilities for new clean-up technology and service reliability. Scheduling installation must not be made more difficult than major maintenance procedures for a responsible utility. Professionals are aware of peak load times and are capable of managing. Alternative sources (fuel cells, wind, PV) could be considered and some customers will cooperate with scheduled inconvenience in return for cleaner air & water. PSC involvement should be limited to implementing conservation and efficiency programs to reduce demand before mandating meeting "demand." Public input is a must for consideration of a variance.

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